

1 **FOLEY & LARDNER LLP**
2 ONE MARITIME PLAZA, SIXTH FLOOR
3 SAN FRANCISCO, CA 94111-3409
4 TELEPHONE: 415.434.4484
5 FACSIMILE: 415.434.4507
6 LAURENCE R. ARNOLD, CA BAR NO. 133715
7 EILEEN R. RIDLEY, CA BAR NO. 151735
8 SCOTT P. INCIARDI, CA BAR NO. 228814
9 KRISTY KUNISAKI, CA BAR NO. 241005
10 Attorneys for STANFORD HOSPITAL & CLINICS and
11 LUCILE PACKARD CHILDREN'S HOSPITAL

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

11 STANFORD HOSPITAL & CLINICS and
12 LUCILE PACKARD CHILDREN'S
13 HOSPITAL,

14 Petitioners,

15 vs.

16 SERVICE EMPLOYEES
17 INTERNATIONAL UNION, LOCAL 715,

18 Respondent.

Case No: 5:07-CV-05158-JF

STANFORD HOSPITAL & CLINICS'
AND LUCILE PACKARD
CHILDREN'S HOSPITAL'S MOTION
TO COMPEL DEPOSITION OF GREG
PULLMAN

Date: September 24, 2008
Time: 1:30 PM
Dept: Ctrm 4, 5th Floor

Judge: Hon. Jeremy Fogel
Magistrate Judge: Hon. Richard Seeborg

19 SERVICE EMPLOYEES
20 INTERNATIONAL UNION, LOCAL 715

21 Petitioner and Counter-
22 Respondent,

23 vs.

24 STANFORD HOSPITAL & CLINICS and
25 LUCILE PACKARD CHILDREN'S
26 HOSPITAL

27 Respondents and Counter-
28 Petitioners.

Case No: 5:08-CV-00213-JF

Judge: Hon. Jeremy Fogel

1 SERVICE EMPLOYEES
2 INTERNATIONAL UNION, LOCAL 715

3 Petitioner,

4 vs.

5 STANFORD HOSPITAL & CLINICS and
6 LUCILE PACKARD CHILDREN'S
7 HOSPITAL

8 Respondents.

Case No: 5:08-CV-00215-JF

Judge: Hon. Jeremy Fogel

9 SERVICE EMPLOYEES
10 INTERNATIONAL UNION, LOCAL 715

11 Petitioner,

12 vs.

13 STANFORD HOSPITAL & CLINICS and
14 LUCILE PACKARD CHILDREN'S
15 HOSPITAL

16 Respondents.

Case No: 5:08-CV-00216-JF

Judge: Hon. Jeremy Fogel

17 SERVICE EMPLOYEES
18 INTERNATIONAL UNION, LOCAL 715

19 Petitioner,

20 vs.

21 STANFORD HOSPITAL & CLINICS and
22 LUCILE PACKARD CHILDREN'S
23 HOSPITAL

24 Respondents.

Case No: 5:08-CV-01726-JF

Judge: Hon. Jeremy Fogel

25 SERVICE EMPLOYEES
26 INTERNATIONAL UNION, LOCAL 715

27 Petitioner,

28 vs.

29 STANFORD HOSPITAL & CLINICS and
30 LUCILE PACKARD CHILDREN'S
31 HOSPITAL

32 Respondents.

Case No: 5:08-CV-01727-JF

Judge: Hon. Jeremy Fogel

1 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD
2 HEREIN:

3 PLEASE TAKE NOTICE that on September 24, 2008 at 1:30 PM or as soon
4 thereafter as counsel may be heard in Courtroom 4 of the above entitled court, Stanford
5 Hospitals & Clinics and Lucille Packard Children's Hospital (collectively "the
6 Hospitals") will bring on for hearing their Motion to Compel the Deposition of Greg
7 Pullman.¹

8 This motion is made on the grounds that Mr. Pullman has failed without
9 substantial justification and without having served a valid objection, to appear at
10 deposition, and/or to reschedule a date for his deposition. This Motion is based upon this
11 Notice of Motion and Motion, the Memorandum of Points and Authorities, the
12 Declaration of Scott P. Inciardi, the records and pleadings on file herein, and upon such
13 oral and documentary evidence as may be presented at the time of the hearing thereon.

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25

26 ¹ The Hospitals have noticed this Motion for hearing on September 24 because the Court
27 has already directed that a hearing on the Hospitals' outstanding discovery motions
(comprising three motions to compel document productions, and a motion to compel the
depositions of three (3) other witnesses) are to be heard on that date.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 In April, 2008, this Court ruled that Stanford Hospital And Clinics and Lucile
4 Packard Children's Hospital (the "Hospitals") were entitled to pursue discovery into the
5 existence of Service Employees International Union, Local 715 ("Local 715"), the
6 resources of the purported organization, and its legal representation. Accordingly, as part
7 of their discovery efforts, the Hospitals noticed the deposition of Greg Pullman, a former
8 employee of Local 715 and current employee of "Local 715's" parent organization,
9 Service Employees International Union ("SEIU" or the "International"). SEIU's attorney
10 has stated unfounded objections to the deposition of Mr. Pullman, and has refused to
11 produce him for deposition on a mutually agreed-upon date. The Hospitals have spent
12 months attempting to schedule Mr. Pullman's deposition. In response, SEIU has resorted
13 to delay tactics and, more recently, outright stonewalling. The intervention of this Court
14 has, therefore, become necessary, and the Hospitals respectfully request that the Court
15 enter an order requiring SEIU and Mr. Pullman to comply with their legal obligations.
16 The Court should also issue sanctions based upon the refusal of SEIU and Mr. Pullman to
17 comply with valid subpoenas.

II. FACTUAL BACKGROUND

19 Each of these actions involves the Hospitals' obligation to arbitrate with Service
20 Employees International Union, Local 715 ("Local 715") pursuant to a collective
21 bargaining agreement (the "CBA") and/or to comply with arbitration awards purportedly
22 issued pursuant to the CBA. The Hospitals have alleged that "Local 715," has effectively
23 ceased to exist, and that, therefore, there is no entity to act as petitioner in these actions
24 and no party with whom the Hospitals have an obligation to arbitrate. In the alternative,
25 the Hospitals have alleged that, to the extent that "Local 715" does continue to exist, it
26 has invalidly attempted to transfer its representational functions to another SEIU Local,
27 Service Employees International Union, United Healthcare Workers – West ("UHW").

1 The Hospitals also assert that the attorneys from the law firm of Weinberg Roger &
 2 Rosenfeld (the “Weinberg Firm” or “Weinberg”) who have sought to participate in
 3 arbitration proceedings with the Hospitals do not actually represent Local 715, but
 4 instead are retained by UHW and are acting under the guise of an invalid servicing
 5 agreement (the “Servicing Agreement”). [Declaration of Scott P. Inciardi (“Inciardi
 6 Decl.”) ¶ 2.]

7 On April 25, 2008, the Court held a case management conference. At the CMC,
 8 counsel for Local 715 argued that no discovery was necessary in the Cases. The
 9 Hospitals’ counsel, however, argued that, due to the Hospitals’ claims regarding the
 10 status of Local 715, some discovery was necessary before dispositive motions could be
 11 filed. Specifically, it was argued that discovery was necessary on the issues of Local
 12 715’s continued existence, Local 715’s resources, its capacity as representative of the
 13 Bargaining Unit, and the legal representation provided to Local 715. [Inciardi Decl. ¶ 3
 14 Exh. A at 4:2-5:2.] The Court agreed and specifically approved discovery into these
 15 areas. [Id. at 13:25-14:9.]

16 As a part of their discovery efforts, the Hospitals sought to take the deposition of
 17 Greg Pullman. Mr. Pullman is a former employee of Local 715, who held the position of
 18 “Staff Director.” [Inciardi Decl. ¶ 14 & Exh M.] In early to mid 2006, Mr. Pullman was
 19 a primary point of contact between Local 715 and the Hospitals. [Id.] In his capacity as
 20 Staff Director of Local 715, he made representations to the Hospitals regarding the status
 21 of Local 715. [Id.] He was also a participant in the implementation of the Servicing
 22 Agreement between Local 715 and UHW. [Id.] Therefore, the Hospitals concluded that
 23 he likely had information relevant to the issues in these Cases. Accordingly, on June 16,
 24 2008, Mr. Pullman was personally served with deposition subpoenas in each of the Cases.
 25 [Inciardi Decl. ¶ 4 & Exh. B.] The deposition subpoenas required Mr. Pullman to appear
 26 and be deposed at the offices of Foley & Lardner LLP in Palo Alto, California on July 7,
 27 2008. [Id.]

1

2 After Mr. Pullman was served with the Subpoenas, the Hospitals were contacted
 3 by Norman Gleichman, attorney for Mr. Pullman's present employer, SEIU. [Inciardi
 4 Decl. ¶ 5 & Exh. C.] Mr. Gleichman indicated that he would not agree to produce Mr.
 5 Pullman for deposition. [Id.] Additionally, SEIU had been served with subpoenas for the
 6 production of documents, responses to which were due prior to the date noticed for Mr.
 7 Pullman's deposition, but SEIU had not (and to this day has not) responded to those
 8 subpoenas. [Inciardi Decl. ¶ 13 & Exh. L.] Because SEIU had indicated that it would
 9 not produce Mr. Pullman, and had refused to produce documents in advance of the
 10 deposition, the Hospitals were not prepared to go forward with the deposition on the
 11 original date. Nevertheless, notwithstanding Mr. Gleichman's stated objections, and for
 12 reasons unknown to the Hospitals, Mr. Pullman appeared at Foley & Lardner LLP's
 13 offices on July 7, 2008. However, for the aforementioned reasons, the Hospitals were not
 14 prepared to depose Mr. Pullman on that date and the deposition could not take place.²
 15 [Inciardi Decl. ¶ 5-6 & Exh. C-F.]

16

16 Thereafter, the Hospitals attempted to arrange for a mutually acceptable
 17 alternative date for Mr. Pullman's deposition. The Hospitals requested alternative dates
 18 on July 7, 2008, and again on July 11, 2008. [Inciardi Decl. ¶ 6-7 & Exh. D & G.] Mr.
 19 Gleichman provided no dates in response. [Inciardi Decl. ¶ 8] On July 31, still not
 20 having received proposed dates, the Hospitals again requested dates for Mr. Pullman's
 21 deposition, indicating that it needed to receive dates by August 4, 2008 in order to avoid
 22 the necessity of a motion to compel. [Inciardi Decl. ¶ 8 & Exh. H.] Mr. Gleichman
 23 suggested that the parties talk the following day. [Inciardi Decl. ¶ 9 & Exh. I.] The
 24

25

25 ² Additionally, although Mr. Pullman was accompanied by Bruce Harland, counsel for
 26 "Local 715," Mr. Gleichman, who was representing Mr. Pullman as an employee of
 27 SEIU, did not appear at the deposition, and had not indicated that the deposition could
 proceed in his absence. Therefore, it would have been inappropriate for the deposition to
 take place in any event.

28

1 Hospitals agreed, but indicated that it was now necessary for SEIU to indicate whether it
 2 would produce Mr. Pullman, and, if so, the dates on which he was available. [Id.] On
 3 August 6, 2008, Mr. Gleichman again temporized suggesting that the deposition be
 4 discussed after the Hospitals and “Local 715” met and conferred regarding “Local 715’s”
 5 non-compliance with its own discovery obligations. [Inciardi Decl. ¶ 10 & Exh. J.] On
 6 August 7, 2008, the Hospitals again requested that SEIU state whether it would produce
 7 Mr. Pullman for deposition and, if so, on what dates he was available. [Inciardi Decl. ¶
 8 11 & Exh. K.] To date, SEIU has not responded to this communication. [Inciardi Decl. ¶
 9 12.]

10 All told, since Mr. Pullman was served with the subpoenas in early June, and
 11 despite repeated requests by the Hospitals, SEIU has not provided a single mutually
 12 acceptable date on which it would be willing to produce Mr. Pullman, and, at least since
 13 July 7, 2008, has not even been willing to represent that it would produce Mr. Pullman at
 14 all. Accordingly, the intervention of this Court has become necessary.

15 **III. DISCUSSION**

16 **A. The Deposition Of Mr. Pullman Should Be Compelled Because The**
 17 **Information The Hospitals Seek Is Highly Relevant To These Cases.**

18 Rule 26(b)(1) permits discovery in civil actions of “any matter, not privileged, that
 19 is relevant to the claim or defense of any party....” Fed.R.Civ.P. 26(b)(1). “Relevant
 20 evidence” is defined as “evidence having any tendency to make the existence of any fact
 21 that is of consequence to the determination of the action more probable or less probable
 22 than it would be without the evidence.” Fed. R. Evid. 401.

23 The continued existence of “Local 715” (or lack thereof), the resources of “Local
 24 715,” and its representational capacity are all issues at the heart of these Cases. The
 25 Hospitals reasonably anticipate that Mr. Pullman has personal knowledge of relevant
 26 information which touches upon the central issues of these Cases. He was Staff Director
 27 of Local 715 at the time that it entered into the Servicing Agreement, and had direct

1 responsibility for the implementation of the Servicing Agreement. [Inciardi Decl. ¶ 14 &
 2 Exh. M.] Given that the Hospitals claim that the Servicing Agreement is invalid, and that
 3 attorneys purporting to represent "Local 715" are actually acting pursuant to that invalid
 4 Servicing Agreement, his knowledge of these issues is clearly relevant. Furthermore, Mr.
 5 Pullman may have information regarding any plans that may have been in place in 2006
 6 to dissolve Local 715 and/or to transfer its representational functions to UHW – in
 7 particular because the Hospitals contend that the Servicing Agreement that Mr. Pullman
 8 helped implement was the vehicle through which Local 715 attempted to transfer its
 9 functions to UHW. Mr. Pullman can also be expected to have knowledge regarding to
 10 what extent (if any) that employees of Local 715 were performing representational
 11 functions in 2006.

12 The areas described above are only a few of the areas in which Mr. Pullman can
 13 be expected to have information relevant to these Cases. Therefore, SEIU's failure to
 14 make him available for deposition on a mutually agreed-upon date is completely
 15 unjustified, and an order by this Court requiring his appearance is appropriate.³

16 **B. The Court Should Order Sanctions For SEIU's Failure to Produce Mr.
 17 Pullman On A Mutually-Acceptable Date**

18 As a former employee of Local 715, Mr. Pullman has personal knowledge relating
 19 matters that are at issue in these Cases. SEIU can provide no reason for its continued
 20 refusal to schedule his deposition. This Court is authorized to hold in contempt any
 21 person who fails to obey a subpoena without adequate excuse. F.R.Civ.P. 45(e). The

22
 23 ³ The Hospitals have also served subpoenas on SEIU calling for the production of
 24 documents. [Inciardi Decl. ¶ 13 & Exh. L.] The Hospitals believe that SEIU is in
 25 possession of documents that may be relevant to the issues about which Mr. Pullman
 26 would be questioned at his deposition. However, to date, SEIU has refused to provide the
 27 Hospitals with responses to the subpoenas. [Inciardi Decl. ¶ 13.] It would clearly be
 inappropriate for the Hospitals to be forced to take Mr. Pullman's deposition without the
 benefit of potentially relevant documents that SEIU is withholding. Therefore, the
 Hospitals request that the Court order that Mr. Pullman's deposition take place only after
 SEIU has provided appropriate responses to the subpoenas for the production of
 documents.

1 party that is the subject of a motion to compel may be required to reimburse the moving
2 party for costs associated with bringing such a motion if the moving party is successful.
3 Fed. R. Civ. P. 37(a)(5)(A). Therefore, the Hospitals respectfully request that the Court
4 order sanctions against Mr. Pullman, SEIU, and their counsel for the costs, including
5 attorneys fees, associated with bringing this Motion and for their willful failure to comply
6 with valid deposition subpoenas.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Stanford Hospital & Clinics and Lucile Packard
9 Children's Hospital respectfully request that this Court grant their Motion to Compel and
10 order sanctions against Mr. Pullman, SEIU, and their counsel.

11 Dated: August 20, 2008

12 FOLEY & LARDNER LLP
13 LAURENCE R. ARNOLD
EILEEN R. RIDLEY
SCOTT P. INCIARDI

14

15 By: 

16 SCOTT P. INCIARDI
17 Attorneys for STANFORD HOSPITAL &
18 CLINICS and LUCILE PACKARD
19 CHILDREN'S HOSPITAL

20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the **County of San Francisco, State of California**. I am over the age of 18 and not a party to this action; my current business address is **One Maritime Plaza, Sixth Floor, San Francisco, CA 94111-3409**.

On August 20, 2008, I served the foregoing document(s) described as: STANFORD HOSPITAL & CLINICS' AND LUCILE PACKARD CHILDREN'S HOSPITAL'S MOTION TO COMPEL DEPOSITION OF GREG PULLMAN, DECLARATION OF SCOTT P. INCIARDI IN SUPPORT OF STANFORD HOSPITAL & CLINICS' AND LUCILE PACKARD CHILDREN'S HOSPITAL'S MOTION TO COMPEL DEPOSITION OF GREG PULLMAN, AND [PROPOSED] ORDER GRANTING STANFORD HOSPITAL & CLINICS' AND LUCILE PACKARD CHILDREN'S HOSPITAL'S MOTION TO COMPEL DEPOSITION OF GREG PULLMAN on the interested parties in this action as follows:

✓ BY THE FOLLOWING MEANS:

I placed a true copy thereof enclosed in sealed envelope(s) addressed as follows:

**Norman M. Gleichman, Esq.
Deputy General Counsel
Service Employees International Union
CTW, CLC
1800 Massachusetts Avenue
Washington, DC 20036
202.730.7000**

BY EXPRESS SERVICE CARRIER (Via Overnight Courier Service)

I am readily familiar with the firm's practice for collection and processing of correspondence for delivery by Federal Express: collected packages are picked up by an express carrier representative on the same day, with the Airbill listing the account number for billing to sender, at **San Francisco, California**, in the ordinary course of business. I placed the envelope(s) in an envelope or package designated by the express service carrier for collection and processing for express service delivery on the above date following ordinary business practices.

✓ Executed on August 20, 2008, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Susan E. Yardley
Susan E. Yardley